

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

D'ANNUNZIO ROMAN GAVIOLA
PATRON,

Plaintiff,

v.

LEWY HUGH, et al.,

Defendants.

No. 1:24-cv-00655-JLT-SAB (PC)

ORDER DISCHARGING ORDER TO SHOW
CAUSE, DIRECTING SERVICE OF
COMPLAINT ON DEFENDANT C.
HERRERA, AND DIRECTING CLERK OF
COURT TO CHANGE DEFENDANT G.
HERARA TO C. HERRERA

(ECF Nos. 31, 35)

Plaintiff is proceeding pro se and in forma pauperis in this action filed pursuant to 42 U.S.C. § 1983.

On December 17, 2024, the Court issued an order for Plaintiff to show cause why Defendant G. Herara should not be dismissed under Federal Rule of Civil Procedure 4(m). (ECF No. 31.)

On January 7, 2025, Plaintiff filed a motion to correct the name of Defendant G. Herara to Defendant C. Herrera, which the Court construes as a response to the order to show cause. (ECF No. 35.)

Based on the foregoing, it is HEREBY ORDERED that:

1. The Court's order to show cause (ECF No. 31) is DISCHARGED;

2. The Clerk of Court shall change the name of Defendant G. Herara to Defendant C. Herrera;

3. The Clerk of the Court is directed is fill out and forward the following documents to the United States Marshals Service:

(1) One completed and issued summons;

(2) **One completed USM-285 form as to Defendant C. Herrera, correctional officer at the Fresno County Jail;**

(3) One copy of the first amended complaint filed on June 21, 2024 (ECF No. 8), plus an extra copy for the Marshals Service;

(4) One copy of this order, plus an extra copy for the Marshals Service; and

5. Within ten days from the date of this order, the Marshals Service is directed to notify the following defendants of the commencement of this action and to request a waiver of service in accordance with the provisions of Fed. R. Civ. P. 4(d) and 28 U.S.C. § 566(c):

C. Herrera

6. The Marshals Service shall file returned waivers of service as well as any requests for waivers of service that are returned as undelivered as soon as they are received.

7. If a waiver of service is not returned by a defendant within sixty days of the date of mailing the request for waiver, the Marshals Service shall:

a. Personally serve process and a copy of this order upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c), and shall command all necessary assistance from the Fresno County Jail to execute this order. The Marshals Service shall maintain the confidentiality of all information provided by the Fresno County Jail pursuant to this order. In executing this order, the Marshals Service shall contact the Legal Affairs Division of the Fresno County Jail and request the assistance of a Special Investigator if the Litigation Officer at the institution is unable to assist in identifying and/or locating defendants.

b. Within ten days after personal service is effected, the Marshals Service shall file the return of service for the defendant, along with evidence of any attempts to secure a

1 waiver of service of process and of the costs subsequently incurred in effecting service
2 on said defendant. Said costs shall be enumerated on the USM-285 form and shall
3 include the costs incurred by the Marshals Service for photocopying additional copies
4 of the summons and complaint and for preparing new USM-285 forms, if required.
5 Costs of service will be taxed against the personally served defendant in accordance
6 with the provisions of Fed. R. Civ. P. 4(d)(2).

7 8. If defendant waives service, they are required to return the signed waivers to the
8 Marshals Service. The filing of an answer or a responsive motion does not relieve
9 defendants of this requirement, and the failure to return the signed waivers may subject
10 defendants to an order to pay the costs of service pursuant to Fed. R. Civ. P. 4(d)(2).

11 IT IS SO ORDERED.

12 Dated: **January 8, 2025**



13 STANLEY A. BOONE
14 United States Magistrate Judge
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